

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LIBERTY MUTUAL INSURANCE
CO., et al.,

Plaintiffs,

v.

BENJAMIN LANGE, et al.,

Defendants.

CASE NO. C20-0390JLR

ORDER

I. INTRODUCTION

Before the court is Plaintiffs Liberty Mutual Insurance Company and Liberty Insurance Corporation's (collectively, "Liberty Mutual") motion to lift the stay in this action. (Mot. (Dkt. # 44); Reply (Dkt. # 48).¹) Plaintiffs Benjamin and Carolyn Lange (collectively, the "Langes") oppose the motion. (Resp. (Dkt. # 46).) The court has

¹ Liberty Mutual's briefs do not include the word count certification required by Local Civil Rule 7(e)(6). (*See* Mot.; Reply); Local Rules W.D. Wash. LCR 7 (Feb. 1, 2023). Going forward, a brief that fails to follow the Local Civil Rules may be stricken from the docket.

1 reviewed the parties' submissions, the balance of the record, and relevant law. Being
 2 fully advised,² the court GRANTS Liberty Mutual's motion.

3 II. BACKGROUND

4 On November 17, 2020, the court granted the parties' stipulated motion to stay
 5 this case pending the outcome of trial in an underlying action between the Langes and
 6 their adoptive daughter in state court (the "Underlying Dispute"). (11/17/20 Order (Dkt.
 7 # 31) (referencing *C.L. v. Carolyn Lange and Benjamin Lange*, Whatcom County
 8 Superior Court Cause No. 17-2-02207-37); Mot. to Stay (Dkt. # 30).) The Underlying
 9 Dispute was filed in November 2017 by the Langes' adoptive daughter, C.L., in
 10 Whatcom County. (*See* Compl. (Dkt. # 1), Ex. 1 (Dkt. # 19-1); Eversole Decl. (Dkt.
 11 # 45) ¶ 5.) C.L. brings various tort claims against the Langes related to abuse she
 12 suffered in their care. (Compl. ¶¶ 10-13.) Liberty Mutual, which had issued
 13 homeowners' insurance policies to the Langes, agreed to defend the Langes in the
 14 Underlying Dispute under a full reservation of rights, including the right to withdraw.
 15 (*Id.* ¶¶ 14-17.)

16 On February 26, 2020, Liberty Mutual filed this action, seeking a declaratory
 17 judgment that it has no duty to defend the Langes in the Underlying Dispute. (*Id.*
 18 ¶¶ 31-33.) Liberty Mutual filed and then withdrew a motion for summary judgment (*see*
 19 MSJ (Dkt. # 24); Not. (Dkt. # 28)), and on November 17, 2020, the parties filed a
 20 stipulation to stay proceedings pending trial in the Underlying Dispute (Mot. to Stay). In

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 22 ² Neither party requests oral argument (*see* Mot. at 1, Resp. at 1) and the court finds oral
 argument unnecessary to its disposition of the motion, *see* Local Rules W.D. Wash. LCR 7(b)(4).

1 the stipulated motion, the parties noted that a stay was necessary (1) because of
2 unresolved factual issues in the Underlying Dispute, (2) to avoid the risk of inconsistent
3 results, and (3) to avoid requiring the Langes to litigate both actions simultaneously. (*Id.*
4 ¶¶ 2-3.) The court granted the parties' stipulated motion and stayed the matter, allowing
5 either party to move to terminate the stay upon 30 days' written notice to the opposing
6 party. (11/17/20 Order at 2.) Throughout the two years that followed, this court
7 extended the stay several times. (*See* Dkt.)

8 The Underlying Dispute is currently stayed while the Washington Court of
9 Appeals reviews the Langes' appeal of a trial court ruling. (*See* Eversole Decl. ¶¶ 8-11,
10 Ex. 2.) According to both parties, discovery in the Underlying Dispute is now complete.
11 (*See* Mot. at 6; Resp. at 8.) On October 31, 2022, Liberty Mutual provided the Langes
12 with written notice that it intended to ask the court to lift the stay. (*See* 10/31/22 JSR
13 (Dkt. # 42).) Liberty Mutual now asks the court to lift stay, contending that the primary
14 reasons for imposing the stay are no longer applicable and noting its intent to file a new
15 motion for summary judgment. (Mot. at 2, 4.) The Langes oppose Liberty Mutual's
16 motion, arguing that this matter and the Underlying Dispute involve potentially
17 overlapping issues, and that the Langes may be prejudiced by having to take positions in
18 this litigation contrary to their position in the Underlying Dispute. (Resp. at 7.)

19 III. ANALYSIS

20 The court first reviews the relevant legal standard before analyzing Liberty
21 Mutual's motion.
22

1 **A. Legal Standard**

2 A district court has discretionary power to stay proceedings before it. *Lockyer v.*
3 *Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005). A stay may be especially useful
4 “pending resolution of independent proceedings which may bear upon the case.”
5 *Mediterranean Enters., Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983).
6 However, where the independent proceeding is unlikely to resolve issues that may bear
7 upon the case, a stay may not be justified. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1113
8 (9th Cir. 2005). Moreover, a stay should not be indefinite. *Dependable Highway Exp.,*
9 *Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007).

10 The court weighs the following competing interests in considering whether to stay
11 proceedings or terminate a stay: (1) the possible damage that continuing the stay may
12 occasion; (2) the hardship a party may suffer in being required to go forward; and (3) the
13 “orderly course of justice measured in terms of the simplification or complication of
14 issues, proof, and questions of law that could be expected to result from a stay.” *Fed. Ins.*
15 *Co. v. Holmes Weddle & Barcott PC*, No. C13-0926JLR, 2014 WL 358419, at *3 (W.D.
16 Wash. Jan. 31, 2014) (citing *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)); *see*
17 *also Commerce W. Ins. Co. v. Allen*, Case No. C18-5828RJB, 2019 WL 3530912, at *3
18 (W.D. Wash. Apr. 24, 2019) (applying these factors to determine whether to lift a stay).

19 **B. Whether the Stay Should be Lifted**

20 On balance, the court concludes that the factors weigh in favor of lifting the stay.
21 The court reviews each factor.

1 1. The Possible Damage from Continuing the Stay

2 Liberty Mutual argues that the Langes will not be harmed if the stay is lifted and
 3 this court is able to adjudicate Liberty Mutual’s declaratory judgment action. (Mot. at 7.)
 4 According to Liberty Mutual, it will be harmed by having to continue paying the Langes’
 5 defense costs in the Underlying Dispute. (*Id.*) The Langes disagree, arguing that (1) the
 6 Langes will be harmed by having to fight a “two-front war” and (2) Liberty Mutual will
 7 suffer no harm if the stay remains in place, because an insurer is not harmed by having to
 8 defend its insured. (Resp. at 11-12 (citing *Woo v. Fireman’s Fund Ins.*, 164 P.3d 454,
 9 459 (Wash. 2007)).) Liberty Mutual responds that there is no “two-front war” because
 10 litigating the issues before this court will require very little of the Langes. (Mot. at 7;
 11 Reply at 5-6 (noting resolution of Liberty Mutual’s forthcoming summary judgment
 12 motion will require no discovery).)

13 The court is sympathetic to the Langes’ burden of litigating in two forums.
 14 However, as Liberty Mutual notes, the questions before this court are purely legal and no
 15 discovery will be necessary; the additional burden on the Langes of litigating in this court
 16 will therefore be minimal. (*See* Reply at 5, *see also infra* § III.B.2); *see also Dependable*
 17 *Highway*, 498 F.3d at 1066 (“being required to defend a suit [if the stay is lifted] does not
 18 constitute a clear case of hardship or inequity”) (cleaned up). Regardless, between the
 19 two parties, Liberty Mutual stands to suffer the greater possible damage, because it will
 20 have to continue paying the Langes’ defense costs in the Underlying Dispute, even as its
 21 obligation to pay those costs remains unresolved by this court. *See, e.g., Nat’l Sur. Corp.*
 22 *v. Immunex Corp.*, 297 P.3d 688, 694 (Wash. 2013) (determining that, under a reservation

1 of rights defense, the insurer must bear the insured's defense costs until a determination
 2 of noncoverage). Accordingly, the court concludes that this first factor weighs in favor of
 3 lifting the stay.

4 2. The Hardship or Inequity a Party May Suffer

5 With respect to the second factor, the Langes argue at length that Liberty Mutual's
 6 motion for summary judgment will prejudice them by: (1) requiring them to litigate
 7 unresolved facts in the Underlying Dispute; (2) requiring them to allege conduct that
 8 triggers coverage under the insurance policy, contrary to their interests in the Underlying
 9 Dispute; and (3) potentially resulting in rulings from this court that will be prejudicial to
 10 them in the Underlying Dispute. (*See Resp. at 7-11.*) Liberty Mutual vehemently
 11 disagrees, asserting that, should the court lift the stay, the questions before it will be
 12 purely legal interpretations of the Langes' insurance policy and the complaint in the
 13 Underlying Dispute. (Reply at 2-5 (asserting, in part, that "the Langes do not have to
 14 admit any fault or liability, and this court need not make any finding as to the Langes'
 15 *actual* fault . . . to resolve the outstanding issues of coverage" (emphasis in original)).)
 16 The court agrees with Liberty Mutual that the potential hardship or prejudice the Langes
 17 may suffer from lifting the stay is speculative at best, and largely unlikely given the
 18 court's limited tasks in resolving Liberty Mutual's request for relief.

19 In this action, Liberty Mutual seeks a declaration that it has no duty to defend or
 20 indemnify the Langes against C.L.'s claims in the Underlying Dispute. (*See Compl.*
 21 ¶¶ 31-33.) In Washington, an insurer's "duty to defend generally is determined from the
 22 'eight corners' of the insurance contract and the underlying complaint." *Nat'l Union Fire*

1 *Ins. Co of Pittsburgh, PA v. Coinstar, Inc.*, 39 F. Supp. 3d 1149, 1156 (W.D. Wash.
 2 2016) (quoting *Expedia, Inc v. Steadfast Ins. Co.*, 329 P.3d 59, 64 (Wash. 2014)); *see*
 3 *also Standard Fire Ins. Co. v. Lange*, No. C20-0092JLR-MLP, 2020 WL 6083452, at
 4 *3-4 (W.D. Wash. Sept. 29, 2020), *report and recommendation adopted*, No.
 5 C20-0092JLR, 2020 WL 6079176 (W.D. Wash. Oct. 15, 2020) (“The [c]ourt construes
 6 an insurance policy as a contract, and the interpretation of that contract is a question of
 7 law.”). Thus, if the court lifts the stay, the task before it will be to determine “if the
 8 insurance policy conceivably covers the allegations in [C.L.’s] complaint.” *Woo*, 164
 9 P.3d at 459 (emphasis removed). The court will only consider facts extrinsic to the
 10 complaint and policy if coverage is not clear from the face of the complaint, or if
 11 allegations in the complaint conflict with facts “known or readily ascertainable by the
 12 insurer.” *Truck Ins. Exch. v. Vanport Homes, Inc.*, 58 P.3d 276, 282 (Wash. 2002). Both
 13 scenarios “favor the insured.” *Id.*; *see also Woo*, 164 P.3d at 459 (noting the insurer may
 14 rely on extrinsic facts to trigger, but not to deny, its duty to defend).³

15 Liberty Mutual also asks the court to determine whether it has a duty to indemnify
 16 the Langes, should the court find in the Langes’ favor with respect to Liberty Mutual’s
 17 duty to defend. (*See* Compl. ¶ 32.) Liberty Mutual’s duty to indemnify the Langes will
 18 “hinge[] on the insured’s actual liability to the claimant and actual coverage under the
 19

20 ³ Moreover, the court must draw all reasonable inferences in the Langes’ favor when it
 21 decides Liberty Mutual’s forthcoming motion for summary judgment, and any dispute of
 22 material fact with respect to Liberty Mutual’s duty to defend or indemnify the Langes will be
 fatal to the motion. *See, e.g., Scott v. Harris*, 550 U.S. 372, 378 (2007).

1 policy.” *Hayden v. Mut. of Enumclaw Ins. Co.*, 1 P.3d 1167, 1171 (Wash. 2000)
 2 (emphasis removed). The threshold question of the Langes’ “actual liability” to C.L. is
 3 for the court in the Underlying Dispute to decide; the Langes therefore need not make
 4 arguments in this court contrary to their interests in the Underlying Dispute.⁴

5 Under this second factor, the low likelihood that the Langes will suffer prejudice if
 6 this litigation resumes weighs in favor of lifting the stay.

7 3. The Orderly Course of Justice

8 The orderly course of justice is “measured in terms of the simplifying or
 9 complicating of issues, proof, and questions of law which could be expected to result
 10 from a stay.” *CMAX*, 300 F.2d at 268. The Langes argue that this court will be unable to
 11 fully resolve Liberty Mutual’s motion for summary judgment while the Underlying
 12 Dispute is still pending. (Resp at 12.) Liberty Mutual argues that there is no overlap in
 13 the legal or factual issues between this litigation and the Underlying Dispute and
 14 therefore no risk of complicating the issues. (Reply at 7.) For the reasons articulated
 15 above (*see supra* § III.B.2), the court agrees that resolving the issue of Liberty Mutual’s
 16 duty to defend the Langes does not turn on overlapping issues with the Underlying
 17 Dispute, and concludes that such a decision from this court will not complicate the issues
 18 between the parties. Accordingly, the orderly course of justice supports lifting the stay.

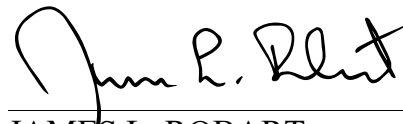
21 ⁴ If this court must ultimately reach the question of Liberty Mutual’s duty to indemnify
 22 the Langes before the court in the Underlying Dispute determines the Langes’ actual liability to
 C.L., *see Hayden*, 1 P.3d at 1171, either party may request another stay. However, under the
 current circumstances, such a scenario is too speculative to justify extending the present stay.

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IV. CONCLUSION

For the foregoing reasons, the court GRANTS Liberty Mutual's motion to lift the stay (Dkt. # 44) and LIFTS the stay in this case. The court further ORDERS the parties to submit a joint status report no later than **April 6, 2023** regarding (1) a schedule for filing dispositive motions, (2) when the parties anticipate being ready to take this case to trial, and (3) the anticipated duration of the trial.

Dated this 23rd day of March, 2023.



JAMES L. ROBART
United States District Judge